

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE:

MONICA N SANTOS

Debtor and KWASI A KUBI Codebtor

Address: 904 Royal Elm Ct

Herndon, VA 20170

Last four digits of Social Security No.(s): XXX-XX-6805

BCN #: 18-13067-BFK

Chapter: 13

NOTICE OF MOTION AND HEARING

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on this motion, then within fourteen (14) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address: Clerk of Court, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314, and serve a copy on the Movant. Unless a written response is filed and served within this fourteen day period, the Court may deem any opposition waived, treat the motion as conceded, and issue an Order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the fourteen day period.

You may attend the preliminary hearing scheduled to be held on: November 7, 2018 at 9:30 AM in Courtroom I, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an Order granting the requested relief.

SHAPIRO & BROWN, LLP
ATTORNEYS FOR THE MOVANT

Dated: October 8, 2018

/s/ Mary F. Balthasar Lake
BY: Gregory N. Britto, Esquire, VSB #23476
William M. Savage, Esquire, VSB #26155
Malcolm B. Savage, III, Esquire, VSB #91050
Thomas J. Gartner, Esquire, VSB #79340
Mary F. Balthasar Lake, Esquire, VSB #34899
Matthew Beddingfield, Esquire, VSB #87305
SHAPIRO & BROWN, LLP
501 Independence Parkway, Suite 203
Chesapeake, Virginia 23320
(703) 449-5800
VABECF@logs.com

CERTIFICATE OF SERVICE

I certify that I have this 8th day of October, 2018, electronically transmitted and/or mailed by first class mail, postage pre-paid, a true copy of the foregoing Notice of Motion to the following:

Monica N Santos
904 Royal Elm Court
Herndon, VA 20170

Thomas P. Gorman
300 N. Washington St. Ste. 400
Alexandria, VA 22314

Kwasi A Kubi
904 Royal Elm Ct
Herndon, VA 20170

/s/ Mary F. Balthasar Lake
Gregory N. Britto, Esquire, VSB #23476
William M. Savage, Esquire, VSB #26155
Malcolm B. Savage, III, Esquire, VSB #91050
Thomas J. Gartner, Esquire, VSB #79340
Mary F. Balthasar Lake, Esquire, VSB #34899
Matthew Beddingfield, Esquire, VSB #87305

United States Bankruptcy Court
Eastern District of Virginia
Alexandria Division

In Re:
MONICA N SANTOS
Debtor

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR Banc of America Mortgage Securities, Inc.
Mortgage Pass-Through Certificates, Series 2004-K

Movant/Secured Creditor,

v.

Monica N Santos

Debtor

KWASI A KUBI

Codebtor

and

Thomas P. Gorman

Trustee

Respondents

BCN#: 18-13067-BFK
Chapter: 13

Motion for Order Granting Relief From Automatic Stay and Co-Debtor Stay for Bad Faith in Filing, for Injunction Preventing Subsequent Filings as to Movant, and Notice of Motion and Hearing

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR Banc of America Mortgage Securities, Inc. Mortgage Pass-Through Certificates, Series 2004-K, and/or present noteholder, (hereinafter “the Movant”), alleges as follows:

1. That the bankruptcy court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 157 and § 1334 and 11 U.S.C. §§ 362 and 1301; Federal Rule of Bankruptcy Procedure 9014 and; 11 U.S.C. § 1301(a).

2. That the above named Debtor filed a Chapter 13 Petition in Bankruptcy with this Court on September 10, 2018.

3. That Thomas P. Gorman has been appointed by this Court as the Chapter 13 Trustee in this instant Bankruptcy proceeding.

4. That the subject Deed of Trust secures a parcel of real property (hereinafter “the Property”) with the address of 904 Royal Elm Ct, Herndon, VA 20170 and more particularly

described in the Deed of Trust dated September 20, 2004 and recorded as Deed Book 16525, Page 1172 among the land records of the said city/county, as:

LOT 7, ROYAL ELM ESTATES, being duly dedicated, platted, and recorded in Deed Book 15067 at Page 1217 among the Land Records of Fairfax County, Virginia.

5. That the Movant is informed and believes, and, based upon such information and belief, alleges that title to the Property is currently vested in the name of the Debtor and Codebtor.

6. Movant has elected to initiate foreclosure proceedings on the Property with respect to the deed of trust, but is prevented by the Automatic Stay from going forward with these proceedings.

7. The instant Bankruptcy petition was filed in bad faith and solely to delay Movant's efforts to foreclose on its security interest in the above described property. In support thereof, Movant further states that the Debtor and Co-Debtor have filed the following bankruptcy petitions with the following results:

- a.) Chapter 7 bankruptcy filed October 26, 2010, and converted to a Chapter 13 on January 27, 2011

Case number: 10-19049-RGM

Filed by: Kwasi A Kubi

Result: Dismissed April 20, 2011.

- b.) Chapter 13 bankruptcy filed October 17, 2011

Case number: 11-17517-RGM

Filed by: Kwasi A. Kubi

Foreclosure Sale Date: October 20, 2011

Total Debt: \$587,033.83

Result: Dismissed November, 17, 2011.

- c.) Chapter 13 bankruptcy filed December 10, 2012

Case number: 12-17251-RGM

Filed by: Kwasi A Kubi

Foreclosure Sale Date: December 11, 2012

Total Debt: \$616,842.09

Result: Dismissed February 13, 2013.

d.) Chapter 13 bankruptcy filed July 10, 2017

Case number: 17-12364-BFK

Filed by: Kwasi A Kubi

Foreclosure Sale Date: July 26, 2017

Total Debt: \$639,619.53

Result: Dismissed August 29, 2017.

e.) Chapter 13 bankruptcy filed January 8, 2018

Case number: 18-10076-BFK

Filed by: Kwasi A Kubi

Foreclosure Sale Date: January 10, 2018

Total Debt: \$661,576.03

Result: Dismissed March 9, 2018; Barred Debtor Kwasi A. Kubi for 90 days; starting 3/9/2018 to 6/7/2018.

f.) Chapter 13 bankruptcy filed July 9, 2018

Case number: 18-12387-BFK

Filed by: Monica N Santos

Foreclosure Sale Date: July 11, 2018

Total Debt: \$679,792.08

Result: Dismissed July 31, 2018.

g.) Chapter 13 filed September 10, 2018

Case number: 18-13067-BFK

Filed by: Monica N Santos

Foreclosure Sale Date: September 12, 2018

Total Debt: \$690,590.32

Result: Pending

8. The series of seven (7) bankruptcy filings indicate lack of "good faith" on the part of Debtor and Co-Debtor, constitutes a substantial abuse of the Bankruptcy Code, and is cause to grant the relief prayed for in the instant bankruptcy case.

9. The Debtor and Co-Debtor's pattern of successive bankruptcy filings indicates "bad faith" and an attempt to forestall any foreclosure actions undertaken by Movant. In the first bankruptcy, a chapter 7 which converted to a chapter 13, it was Dismissed April 20, 2011. The second bankruptcy, a chapter 13, was Dismissed November, 17, 2011. The third bankruptcy, a chapter 13, was Dismissed February 13, 2013. The fourth bankruptcy, a chapter 13, was Dismissed August 29, 2017. The fifth bankruptcy, a chapter 13, was Dismissed March 9, 2018 and Kwasi A. Kubi was Barred for 90 days, starting 3/9/2018 to 6/7/2018. The sixth bankruptcy, a chapter 13, was Dismissed July 31, 2018. The seventh bankruptcy, a chapter 13, is currently open and pending.

10. That the Debtor is in default with regard to payments which have become due under the terms of the Note and Deed of Trust since the filing of the Chapter 13 petition.

As of October 5, 2018, the Debtor is due for:

- o 6 contractual monthly payments from February 2017 through July 2017 of \$4,981.40 each which were to be paid directly to Movant;
- o 3 contractual monthly payments from August 2017 through October 2017 of \$5,010.30 each which were to be paid directly to Movant;
- o 3 contractual monthly payments from November 2017 through January 2018 of \$5,191.99 each which were to be paid directly to Movant;
- o 6 contractual monthly payments from February 2018 through July 2018 of \$5,091.04 each which were to be paid directly to Movant;
- o 2 contractual monthly payments from August 2018 through September 2018 of \$5,099.24 each which were to be paid directly to Movant;
- o 1 contractual monthly payment for October 2018 of \$5,115.04 which was to be paid directly to Movant;
- o Bankruptcy Fees of \$850.00
- o Bankruptcy Costs of \$181.00

11. That as of October 5, 2018 the unpaid principle balance was \$624,935.27.

12. Attached are redacted copies of any documents that support the claim, such as Promissory Notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

13. Movant has elected to initiate foreclosure proceedings on the Property with respect to the Deed of Trust, but is prevented by the Automatic Stays from going forward with these proceedings.

14. That the Movant is informed and believes, and, based upon such information and belief, alleges that the Debtor has little or no equity in the property.

15. That continuation of the automatic stays pursuant to 11 U.S.C. §§ 362(a) and 1301(a) will work real and irreparable harm and deprive the Movant of the adequate protection to which it is entitled.

16. That the Movant has requested that the Court hear this matter on November 7, 2018 at 9:30 AM.

WHEREFORE, the Debtor having forsaken the legitimate use of the bankruptcy process, Movant prays for an order granting In Rem Relief from the Automatic Stays of 11 U.S.C. §§ 362 and 1301, and ordering that a subsequent filing by the Debtor or any party to which he/she may transfer the property, will not create a stay as to the property and will be ineffective as to the Movant and its assigns and/or successors. Movant further requests that the 14-day waiting period imposed by F.R.B.P. 4001(a)(3) be waived, and further ordering that the Movant may proceed to perform any and all acts necessary in order to obtain lawful possession of the property subsequent to any foreclosure sale. Movant further requests attorneys' fees and costs, and such further relief as the Court and equity deem justifiable.

SHAPIRO & BROWN, LLP
ATTORNEYS FOR THE MOVANT

Dated: October 8, 2018

/s/ Mary F. Balthasar Lake
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Certificate of Service

I certify that I have this 8th day of October, 2018, electronically transmitted and/or mailed by first class mail, true copies of the Motion for Relief from the Automatic Stay and Notice of Motion and Hearing to each party required to receive notice.

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